1943.

File No. Cotton Contracts II/43.

K

Legal Department

B. **BRANCH**

Subject:- Rules and Notifications under the Bombay Cotton Contracts Control Act 1932

(P & E)

File No. Cotton Contracts II/43.

Gen. 194 e.

3.88 K

Office of the R.L.A.

Clause (b) of by-law 47(1) of the by-laws of the East India Cotton Association provides that no person shall trade in new crops in any year before such date, being later than the 1st May, as may be fixed in this behalf by the Board with the previous approval of the Government of Bombay. The by-law in effect allows a person to trade in new crops with effect from a date to be fixed by the Board with the previous approval of the Government. Such a date will necessarily be a date not antecedent to the one on which the board acts under the said clause. If any person has traded, say, since 20th May he has already incurred the penalties prescribed in the by-laws (see by-law 47(2),) and if now the Board fixes 20th May 1943 as the date for trading in the new crop it will in effect legalize all such part trading and exempt a person from the penalties already incurred by him. In the absence of clear words such a power cannot be considered to have been given to the Board. It would, therefore, follow that under by-law 47 (1)(b) as it stands the Board cannot fix a date with retrospective effect.

Sd/-P.N.M.
13-5

Remembrancer of Legal Affairs.

A(F)

x 152-L
13/8/43

Office of the R.L.A.

First alternative of Government inserting a new clause (1A) in by-law 47 of the East India Cotton Association under section 3(1) of the Bombay Options in Cotton Prohibition Act, 1939.- The view taken by F in para. 2 of their note at page 11 ante is not correct. The essence of the proposed new clause is to give retrospective effect to the validation of trading in new crop cottons for the season 1943-44 since the 20th May 1943. For the reasons explained in R.L.A's opinion No. 152-L, dated the 13th August 1943, persons who have traded since 20th May, before the date fixed by the Board under by-law 47(1)(a), have already incurred penalties and the legalising of void trading agreements will also result in creating contractual rights and imposing contractual liabilities where none existed before. In the absence of ~~et~~ clear words to that effect neither Government under section 3(1), of the Bombay Options in Cotton Prohibition Act, 1939, nor the Board under section 6 of the Bombay Cotton Con tracts Act, 1932, can be considered to have been given power to make a provision on the lines of the pro posed clause. The first alternative suggested by the Solicitors is not therefore feasible.

2. Second alternative of suspending the operation of by-law 47 by means of an order under rule 81(2) of the Defence of India Rules .- The view taken by F.D. in para. 3 of their note at page 12 ante is correct. No order under rule 81(2) of the Defence of India Rules can be given retrospective effect.

The only remedy to regualrise the position is legislation.

Sd/-P.N.M.
21-9

Remembrancer of Legal Affairs.

U.R. to F.D' , No. 6429 dated the 23rd September 1949.

S.C' 13/7 4 copies.